



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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Memorandum

Date: May 19, 2022

To: Richard Conescu, Chair, & Members, Zoning Board of Adjustment

From: Casey Wolfe, Assistant Planner

Subject: **Deborah Atamanchuck (petitioner/owner)** – Variance under Section 2.02.3 of the Zoning Ordinance to permit mixed use (residential and bakery) in the C-2 (General Commercial) District. The parcel is located at 4 Mound Court in the C-2 (General Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts. Tax Map 4D-4, Lot 2. Case # ZBA 2022-15

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background

Map 4D-4, Lot 002 is located at 4 Mound Court in the C-2 (General Commercial), Aquifer Conservation, and Elderly Housing Overlay Districts. The subject property is serviced by public water (Merrimack Village District) and municipal sewer. The lot is currently the site of Bite Me Kupcakez. It is abutted by the TD Bank to the north, offices to the west, a doctor's office to the south, and a commercial plaza to the east.

The petitioner seeks a Variance under Section 2.02.3 of the Zoning Ordinance to permit mixed use (residential and bakery) in the C-2 (General Commercial) District.

The property (originally a single family home built in 1970) has been used commercially since the Planning Board approved a site plan in 1980 to allow for an office use at the site. Unfortunately, the owner at that time should have been instructed to seek a variance to allow for a mixed use in the C-2 district. Since that time, the building has simultaneously retained both its residential and commercial uses and in October of 2016, the bakery/café "Bite Me Kupcakez" was approved via Administrative Approval.

The petitioner now seeks a Variance to retroactively permit & legitimize the mixed use (residential and bakery) in the C-2 (General Commercial) District. Staff notes that had this been a dimensional violation and not a use violation, it would have qualified for an Equitable Waiver under State law since it has existed for over 10 years without enforcement action having been taken. Unfortunately, Equitable Waivers cannot be applied to a use violation.

Standard of Review

It is the burden of the petitioner to demonstrate that the five criteria for the granting of the variance under Section 2.02.3 of the Zoning Ordinance to permit mixed use (residential and bakery) in the C-2 (General Commercial) District, are met.

Ec: Deborah Atamanchuck, petitioner/owner
Matt Peterson, Keach-Nordstrom Associates, Inc.
Building Department Staff
John Manuele, Fire Marshal
Dawn Tuomala, PE, Deputy Director of Public Works/Town Engineer
Cc: Zoning Board File